84-840

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ALEXANDER L. STEVAS,
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No.

IN THE
SUPREME COURT OF THE UNITED STATES

ANDREW A. KASHETTA, Petitioner
VS
LOTTIE L. KASHETTA, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

(Order entered 6-12-84 in case of Andrew A. Kashetta, Petitionr vs Lottie L. Kashetta, No. 698 E.D. Allocatur Docket 1983)

ANDREW A. KASHETTA, pro se
R.D. #1, Jermyn, Pa. 18433

DATE: 10-30-84

25 pp

QUESTION PRESENTED FOR REVIEW

1. Whether fraud was practiced on the courts which deprived Petitioner of due process and equal protection of the laws secured by the U. S. Constitution, Amendment 14, in that the attorneys for Petitioner took $2,250.00 from him for which they assured him a prompt divorce and an equal partition of the marital real estate but, instead, in collusion with the opposition and without notice to or consent of Petitioner, filed a "PRAECIPE TO DISCONTINUE" Petitioner's "COMPLAINT IN DIVORCE".

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No.

IN THE
SUPREME COURT OF THE UNITED STATES

ANDREW A. KASHETTA, Petitioner,
VS.
LOTTIE L. KASHETTA, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

The Petitioner Andrew A. Kashetta, pro se, respectfully prays that a writ of certiorari issue to review the ORDER of the Supreme Court of Pennsylvania entered in this proceeding on 6-12-84.

OPINION BELOW

The Supreme Court of Pennsylvania rendered no opinion. It entered an Order on 6-12-84 in the case of Andrew A. Kashetta, Petitioner vs Lottie L. Kashetta, No. 698 E.D. Allocatur Docket 1983, denying Petitioner's "PETITION FOR ALLOWANCE OF APPEAL". A copy of the Order is attached as Appendix A-13.

The Superior Court of Pennsylvania rendered its "MEMORANDUM OPINION" on 8-26-83 (Appendix A-5); and "JUDGMENT" entered on 8-26-83 (Appendix A-12).

The Court of Common Pleas rendered an "OPINION" entered on 1-29-82 (Appendix A-1); and entered an "ORDER" on 1-29-82, dated 1-28-82 (Appendix A-4).

JURISDICTION

The Supreme Court of Pennsylvania Order, "PETITION DENIED", was entered on 6-12-84 (Appendix A-13).

The Supreme Court of the United States extended the time to file a petition for a writ of certiorari until 11-3-84.

This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment 14:

> No State shall...deprive any person of ...property, without due process of law; nor deny...equal protection of the laws.

STATEMENT OF THE CASE

On 8-31-76 in a related case, a "COMPLAINT IN DIVORCE" was filed by attorney Popeck for Petitioner, in the case of Andrew A. Kashetta vs Lottie Kashetta, Court of Common Pleas of Lackawanna County, No. 1596, Sep. Term, 1976, for a divorce under the then existing old Pennsylvania divorce law. Pa. Act of 5-2-29, P.L. 1257, 23 P.S.

On 4-19-79, a "COMPLAINT IN EQUITY" in the case of Andrew A. Kashetta vs Lottie L. Kashetta, Court of Common Pleas of Lackawana County, No. 1, May Term 1979, was filed for Petitioner by his attorneys Anthony Popeck and Ralph Carey, to recover the husband's farm tools and one-half of the marital real estate.

But, on 6-5-81, at 12:05 p.m., attorney Popeck, without NOTICE to or CONSENT by the husband, filed a "PRAECIPE TO DISCONTINUE" the husband's "COMPLAINT IN DIVORCE", No. 1596 Sep. Term 1976.

Less than 4 hours later, on 6-5-81, at 3:51 p.m., the law firm of "Levy, Preate & Purcell" for Respondent, filed a "COMPLAINT" in divorce, Lottie L. Kashetta vs Andrew A. Kashetta, No. 81 Civ 3564, under the new 1980 Pennsylvania divorce law, which is much more favorable to Respondent, allowing unequal award of marital real estate. Pa. Act of 4-2-80, P.L. 63, 23 P.S. Sec. 101 etc.

The "PRAECIPE TO DISCONTINUE" did not come to the attention of Petitioner until 2 months after it was filed.

On 1-29-82, the attorneys for Petitioner in collusion with the attorneys for Respondent, wrongfully caused the court of Common Pleas to dismiss Petitioner's "COMPLAINT IN EQUITY", No. 1, May Term 1979.

Because of that fraud Petitioner filed an appeal on 3-1-82 of that dismissal to the Superior Court of Pennsylvania, pro se.

Attorney William J. Purcell, formerly with said law firm of "Levy, Preate & Pur-

cell", was sentenced on 2-15-84 to 30 months in Federal prison followed by 5 years of parole and directed to make restitution of $846,500.00, by U. S. Judge William Cadwell in Harrisburg, Pa., for presenting counterfeit certificates in return for loans totaling $846,500.

In the Superior Court of Pennsylvania, in "BRIEF OF APPELLANT", Petitioner raised the federal question sought to be reviewed, from which is excerpted the following:

> "QUESTION INVOLVED
> "Whether Andrew Kashetta is deprived of due process and equal protection of the laws secured by Amendments 5 and 14 of the United States Constitution."
> "Question was not answered
>
> "ARGUMENT
> "The husband is deprived of due process and equal protection of the laws secured by the United States Constitution, Amendments 5 and 14."

On 8-26-83, the Superior Court of Pa. affirmed the Order of the Court of Common Pleas (Appendix A-5 and A-4).

In the Supreme Court of Pennsylvania, in the husband's "Petition For Allowance Of

Appeal", he raised the federal question sought to be reviewed, from which is excerpted the following:

> "QUESTION PRESENTED
> "Whether Andrew Kashetta was deprived of due process and equal protection of the laws secured by the U. S. Constitution, Amendments 5 and 14."
> The question was not answered.
>
> "REASONS RELIED UPON FOR ALLOWANCE OF AN APPEAL
> "Due process and equal protection of the laws secured by the U. S. Constitution, Amendments 5 and 14 require reversal of the Superior Court judgment."

On 6-12-84, the Supreme Court of Pa. Ordered Petitioner's "Petition For Allowance Of Appeal" denied. (Appendix A-13).

REASONS FOR GRANTING THE WRIT

Petitioner paid his attorneys, Anthony Popeck and Ralph Carey $2,250.00 to promptly recover his farm tools and other credits of $47,005.00, partition the marital real estate, and obtain a divorce.

Instead, Petitioner's attorneys by improper and collusive misconduct with Respon-

dent's attorneys "Levy, Preate & Purcell", on 6-5-81, discontinued the Petitioner's "COMPLAINT IN DIVORCE", No. 1596, Sep. Term 1976, without NOTICE to or consent by Petitioner, so that the attorney for Respondent could file a "COMPLAINT" for divorce under the later Pennsylvania 1980 divorce law.

The real purpose of the collusive misconduct of both sets of attorneys is to cheat and defraud Petitioner out of his property.

A glance at the record shows that said attorneys practiced a fraud upon the courts which deprives Petitioner of due process and equal protection of the laws secured by the U. S. Constitution, Amendments 5 and 14, which fraud should be purged from the record.

The specific facts set forth above, conclusively show that the state courts failed to decide the important question of federal law, due process and equal protection of the laws, which should be settled by this Court.

The instant Petition For A writ Of Certiorari is directly related to the other Petition For A writ Of Certiorari, the case of

ANDREW A. KASHETTA, Petitioner
VS
LOTTIE L. KASHETTA, Respondent
PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF PENNSYLVANIA
No. 242 E.D. Allocatur Docket 1983,

which is being simultaneously filed in this Supreme Court of the United States.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the Order of the Supreme Court of Pa., or in the alternative:

1. Grant Petitioner a divorce;

2. Award Petitioner judgment for $47,005.00, with interest; and

3. Order partition of the marital real estate, one-half to each spouse.

Respectfully submitted,

Andrew A. Kashetta, pro se
R.D. #1, Jermyn, Pa. 18433

APPENDIX

* * *

IN THE COURT OF COMMON PLEAS OF
LACKAWANNA COUNTY

Civil Action In Equity

No. 1 May Term, 1979

ANDREW A. KASHETTA, Plaintiff
VS
LOTTIE L. KASHETTA, Defendant.

OPINION: WALSH, J.

This case is before the Court on Defendant's Motion to Vacate an Order Appointing a Master in Partition for lack of jurisdiction and to dismiss Complaint.

There are two major obstacles to finding in favor of the Plaintiff, Andrew Kashetta. First, there has been no judicial determination of fact as to whether Andrew Kashetta was or was not excluded from the real property which Mr. Kashetta wants partitioned.

Secondly, there is a legitimate legal question as to whether Equity has jurisdiction where there is full and adequate remedy at law under the Divorce Code.

The factual and procedural history of the case shows that Andrew and Lottie Kash-

etta were married in 1939, that they purchased the parcels of real estate in question in 1947 and 1953 respectively, and that in 1958 Andrew Kashetta departed and discontinued living with his wife and family. In 1976, Andrew Kashetta began a divorce proceeding, but the matter was not brought to a conclusion. Then, in April of 1979, Andrew Kashetta filed a Complaint in Equity for partition of real property which he and his wife were holding as tenants by the entireties. In his Complaint, Mr. Kashetta alleged that he was excluded from the marital property, and in her Answers, Mrs. Kashetta denies that allegation. Nowhere is the issue of exclusion resolved. On June 5, 1981, Lottie Kashetta filed for divorce under the 1980 Divorce Code. At this point, Andrew Kashetta wants the real property to be divided in his Equity Action to Partition, and Lottie Kashetta wants the real property to be distributed according to the 1980 Divorce Code.

A similar case, Harvey vs. Harvey, 73 Berks County Law Journal 126 (1981) was decided in Berks County by Judge Schaeffer. In Harvey, the Plaintiff husband had started an Equity Partition action immediately before the defendant wife began a divorce action. The husband argued that the divorce action could not have jurisdiction over the real property which was already the subject of the partition litigation, Judge Schaeffer disagreed with that contention and allowed the wife's divorce action to take jurisdiction over all marital property. This Court is inclined to agree with Judge Schaeffer's disposition of the question. To rule otherwise would create an additional lawsuit and grant Equity jurisdiction when it is not necessary to do so.

For these reasons, Lottie Kashetta's Motion to Dismiss the Complaint will be granted.

O R D E R

NOW, this 28 day of January, 1982, Defendant's Motions to Vacate the Order Appointing a Master and to Dismiss the Complaint are hereby granted.

BY THE COURT
S/ Walsh, J.

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 671 PHL 1982

ANDREW A. KASHETTA,
Appellant,
V.

LOTTIE L. KASHETTA,
Appellee.

Appeal from the Order of January 29, 1982 In the Court of Common Pleas of Lackawanna County, Civil Divison, No. 1 May 1979.

Before: CERONE, P.J., CAVANAUGH, and WIEAND, JJ.

MEMORANDUM OPINION:

Appellant, Andrew A. Kashetta, filed an action in divorce against his wife, appellee, Lottie L. Kashetta, in 1976.[1] Thereafter, while the divorce proceeding was still pending, appellant, through counsel, filed a complaint in equity, in which he alleged he had been excluded from certain jointly held property by his wife, and by which he prayed for partition of this real estate which had

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[1]This action was filed under the old Divorce

been held by both parties as tenants by the entirety since 1947 and 1953.[2] He also requested one-half of all rents collected for the use of the property and the return of his personal farm property.

The record indicates that on June 5, 1981, then counsel for appellant withdrew his complaint in divorce. On the same day, counsel for appellee, Lottie Kashetta, filed for divorce under the Divorce Code of 1980.[3]

Law, the Act of 1929, May 2, P.L. 1237, 23 P.S. Sec. 1 et seq. (repealed).

[2]Under the Divorce Law, property held by Husband and wife as tenants by the entirety was not subject to partition while so held.

> An exception to this general principle is the rule that where Husband and Wife are separated but not divorced and where one of them is excluded from the exercise or enjoyment of rights inherent in an estate held by the entireties, an accounting of the property so held may be ordered and the property or proceeds divided equally between them. (citations omitted) Shapiro v. Shapiro, 424 Pa. 120, 137, 224 A. 2d 164, 173 (1966).

Shoup v. Shoup, 469 Pa. 165, 170 n. 6, 364 A.2d 1319, 1322 n.6 (1976).

Because of this, and upon the motion of counsel for appellee, Lottie L. Kashetta, the lower court then vacated a prior order which had appointed a master in partition, by which the court had previously sought to resolve appellant's Complaint in Equity. The lower court also dismissed the Complaint in Equity.[4] Now, by his pro se appeal, appellant's primary allegation is that he was deprived of his due process and equal protection rights because of these actions by the lower court.[5]

Thus the issue for our consideration is whether the lower court erred in granting

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[3]Act of April 2, 1980, P.L. 63, Sec. 101 et seq., 23 P.S. Sec. 101 et seq. (Supp. 1982-83) (effective July 1, 1980).

[4]The lower court's order puts appellant out of court, thus establishing our jurisdiction under 42 Pa.C.S.A. Sec. 742.

[5]Appellant asserts that his original complaint in divorce was withdrawn by his attorneys without his knowledge or permission. This assertion is not before us for review, thus we will not address it.

appellee's motion to dismiss the action in partition once appellant's complaint under the old divorce law had been withdrawn and the action under the new divorce code had been filed. Andrew Kashetta wants the property to be divided pursuant to his equity action, while Lottie Kashetta wants it distributed according to the 1980 Divorce Code. We find that the lower court acted within its discretion in granting appellee's motion. Therefore, we affirm.

Recently, our court considered a divorce action which was brought under the new Divorce Code, but which involved the lower court's partition of certain settlement proceeds, rather than directing their equitable distribution under the new code. Platek v. Platek, ___ Pa. Superior Ct. ___, 454 A. 2d 1059 (1982). The lower court justified the partition action by referring to appellant-wife's withdrawal of the proceeds from a jointly held account and her keeping of them

in her possession. However, this court reversed the action of the lower court. We referred to Sec. 301 of the new Divorce Code which provides that "in conjunction with any decree granting a divorce," the court shall "determin(e) and dispos(e) of property rights and interests between spouses...including the partition of property held as tenants by the entireties or otherwise...." 23 P.S. Sec. 301(a)(1). However, this Court then cited Sec. 401 of the Code which provides that if the property is "marital property," "the court shall, upon request of either party, equitably divide, distribute or assign" the property between the parties "without regard to marital misconduct in such proportions as the court deems just after considering all relevant factors...." 23 P.S. Sec. 401(d).

Then, as regards the issue in this case, whether an action in partition coexists with a proceeding under the new Divorce Code, this court stated,

> It is apparent, therefore, that the court's power to direct a partition of property is qualified by its duty to divide marital property in an equitable way. If the property is not marital property, the court may direct its partition. But if it is marital property, the court must instead, upon request of either party, direct its equitable division. The result may well be different. For partition is an even division. Vento v. Vento, (256 Pa. Superior Ct. 91, 389 A.2d 615 (1978)). But an equitable division often will not be even; the essence of the concept of an equitable division is that "after considering all relevant factors," the court may "deem () just" a division that awards one of the parties more than half, perhaps the lion's share, of the property.
>
> Here, as we have explained above, the property in question--the proceeds of the settlement—is marital property. It was therefore, the lower court's reponsibility to decide upon an equitable division of the proceeds. In directing their partition instead, the lower court erred.
>
> Platek v. Platek, ___ Pa. Superior Ct.___,___, 454 A.2d 1059, 1062-3 (1982)

Appellant's primary concern in this case is the disposition of the farm which was held by both parties as tenants by the entirety. There is no doubt that this property is marital property, as were the proceeds in Platek. Therefore, the lower court acted

properly within the legislative mandate in granting a motion that would allow distribution of the property to be done equitably under the new Code. As for the personal property which is involved in this case, it remains for the Court to determine its nature. Section 301(a)(1) of the new Code preserves the right of partition of property held as tenants by the entireties or otherwise, but which is not marital property.

Thus, by its order vacating the appointment of a master to partition the property and dismissing appellant's complaint in equity, after appellant's divorce complaint had been withdrawn, the lower court was seeking to consolidate the pending actions into one, that under Divorce Code. This the court had the power to do by 42 Pa.C.S.A. Sec. 323 which permits the Court control over cases within its jurisdiction by making such orders as the interests of justice or the business of the Court may require. Therefore the order

of the lower court is affirmed.

* * * *

PER CURIAM: FILED AUG 26, 1983

The order of the lower court is affirmed.

* * * *

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of Lackawanna County be, and the same is hereby AFFIRMED.

By the Court:

S/ J. Haniel Henry
Prothonotary

Dated: August 26, 1983

* * * *

ORDER OF COURT

AND NOW, this 25th day of October, 1983, appellant's application for reargument is denied.

Per Curiam

SUPREME COURT OF PENNSYLVANIA
Eastern District

June 19, 1984

Mr. Andrew A. Kashetta
R.D. #1
Jermyn, Pa. 18433

Re: Andrew A. Kashetta, Petitioner v.
Lottie L. Kashetta
No. 698 E.D. Allocatur Docket 1983

Dear Mr. Kashetta:

This is to advise you that the following order has been endorsed on the Petition for Allowance of Appeal filed in the above-captioned matter:

June 12, 1984

PETITION DENIED

Per Curiam

Very truly yours,

S/ Patrick Tassos
Deputy Prothonotary